

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

TYSON FOODS, INC., TYSON)
POULTRY, INC., TYSON CHICKEN,)
INC., COBB-VANTRESS, INC., CAL-)
MAIN FOODS, INC., CAL-MAINE)
FARMS, INC., CARGILL, INC.,)
CARGILL TURKEY PRODUCTION, LLC,)
GEORGE'S, INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)

Defendant.)

AFFIDAVIT OF MARLA R. PEEK

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA)

SS.

Marla R. Peek, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Marla R. Peek. I am Director of Regulatory Affairs for the Oklahoma Farm Bureau (OFB) and Director of the OFB Legal Foundation. My address is in Guthrie, OK.

2. I make this affidavit in support of the amicus brief to be filed by OFB opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.
3. OFB was incorporated as a non-profit organization in Oklahoma on March 4, 1942. It is a Section 501(c) (5) organization according to the provisions of the U.S. Internal Revenue Code. The primary purpose of the OFB is to promote the betterment of the conditions of those engaged in agricultural pursuits. OFB currently has about 168,000 member families.
4. The OFB Legal Foundation was created in 2001 by the OFB Board of Directors for the purpose of entering the legal arena to protect private property rights and production agriculture. The Foundation strives to serve farmers and ranchers through engaging in public interest litigation, researching legal issues affecting family farmers and rural Oklahomans, and educating farmers and ranchers and the public about issues important to agriculture.
5. The OFB has a uniform cooperative agreement with the 77 county Farm Bureaus in Oklahoma, as well as the American Farm Bureau Federation (AFBF), headquartered in Washington, D.C. Each county Farm Bureau is its own legal entity, as is the AFBF. The AFBF was created in 1919 and is the largest farm organization in the world, with more than 6.2 million member families. AFBF shapes agricultural, property rights, tax and trade policy at the national and international levels.
6. OFB is a grassroots policy-based organization. The organization's positions on issues originate at the county Farm Bureau level. They are then consolidated and refined by a state resolutions committee, and finally voted upon by the delegate body at the organization's annual meeting. OFB has a book of policy statements for the organization that are applicable from one annual convention until the next one. Annually, one-third of the policy book expires and must be re-instated to remain policy.
7. The OFB policy book, under "Purpose of Farm Bureau" states: "Farm Bureau is an independent, non-governmental voluntary organization of farm and ranch families united for the purpose of analyzing their problems and formulating action to achieve educational improvement,

economic opportunity and social advancement, and, thereby, to promote the national well-being. Farm Bureau is local, county, state, national, and international in its scope and influence and is non-partisan, non-sectarian and non-secret in character. Farm Bureau is the voice of agricultural producers at all levels.”

8. From my past experiences, I have learned many Oklahomans are only aware of Farm Bureau for its insurance sales. The insurance sales are actually from subsidiary companies of OFB, and were created as a “member service” to OFB members. OFB, as the non-profit general farm organization, addresses agricultural issues, not insurance issues.
9. OFB has a wide range of policy on issues relating to agriculture in the areas of property rights, governmental over-regulation, and taxation.
10. OFB has four state lobbyists, including me, who work on issues to inform lawmakers about agricultural policy, both state and national. As Director of Regulatory Affairs, my focus is on regulations and working with the agencies that implement the law.
11. Oklahoma has addressed water quality and animal waste issues through regulatory and non-regulatory mechanisms, including legislation, rulemakings (such as water quality standards), the federal-state 319 nonpoint source program, a state income tax incentive, and the USDA Natural Resources Conservation Service's (NRCS) conservation cost share programs. Oklahoma agriculture is also regulated by the Clean Water Act and other federal laws. OFB and AFBF have participated in and influenced all of the aforementioned mechanisms in which water quality and animal waste issues have been addressed, both at the state and national levels.
12. OFB participated in the legislative process when SB 1170, the Registered Poultry Feeding Operations Act was adopted. The idea that poultry litter and soil should be measured for their phosphorus content prior to application was a new concept.
13. OFB was pleased the Animal Waste Management Plan required in SB 1170 was tied to the Nutrient Management Standard developed by the Oklahoma USDA Natural Resources Conservation Service. It was important to the acceptance of these requirements that the standard was based upon science from an agency agricultural producers trusted. What

the Oklahoma NRCS Conservation Practice Standard for Nutrient Management (Exhibit 11 to the OFB brief) does is "manage the amount, source, placement, form and timing of the application of nutrients and soil amendments." The purposes of the Standard are to: "budget and supply nutrients for plant production; properly utilize manure or organic by-products as a plant nutrient source; minimize agricultural nonpoint source pollution of surface and ground water resources; protect air quality by reducing nitrogen emissions (ammonia and NO_x compounds) and the formation of atmospheric particulates; and maintain or improve the physical, chemical and biological condition of the soil."

14. Oklahoma was one of the first, if not the first state to require nutrient management plans using phosphorus, rather than nitrogen, as the limiting factor. Later, there was an initiative by the USDA-NRCS for every state to adopt its own phosphorus index. Thanks to participation by all segments of the agriculture industry, scientists, regulators and legislators, Oklahoma was ahead of the curve.
15. To provide the Court with a "real life" example of an Animal Waste Management Plan, I requested from the State of Oklahoma Department of Agriculture and received from the State of Oklahoma Department of Agriculture Betty and Bill Anderson's Animal Waste Management Plans. Betty's affidavit is Exhibit 1 and true and correct copies of those plans as I received them from the State are provided at Exhibit 12 to the Brief of Amicus Curiae Oklahoma Farm Bureau Inc. In Opposition to Plaintiffs' Motion for Preliminary Injunction.
16. It is clear to me that poultry producers have embraced the regulations promulgated pursuant to SB 1170. Poultry producers I know are knowledgeable about the regulations they are required to follow. SB 1170 requires annual continuing education for poultry growers, which helps inform producers of the latest scientific developments. OFB proudly points to the fact that our state's environmental regulations for poultry operations exceed federal environmental requirements.
17. OFB supports conservation. Our members serve on conservation district boards around the state. Our organization has consistently supported funding for cost-share for voluntary conservation best management practices. The landowner bears a portion of the costs to implement conservation measures on his property. Conservation practices don't just improve the land for the landowner, they have greater

public benefits. A few of those benefits are keeping the soil on the land, preventing flooding, and helping to filter rain water that makes its way back into our groundwater.

18. Agricultural producers beneficially using animal manure to fertilize and enhance the soil is an age-old practice. Limiting the application of animal manure to protect the environment is not. However, American agriculture producers are more knowledgeable and cognizant of how their actions affect the environment than ever before. I believe they respect the need for reasonable regulation. While agricultural producers understand the need to limit the use of animal manure to control nutrient application, they do not understand how their Attorney General can claim that poultry litter is a solid and/or hazardous waste. To agricultural producers today and historically, animal manure is a beneficial product to fertilize and enhance the soil. Our legislature and regulators have determined that animal manure is not a product that must be disposed of in a solid waste landfill or incinerated because it is hazardous to humans.
19. Last year, the entire agriculture community worked to pass SB 709. OFB and its members were instrumental in informing lawmakers of the issues when the legislature passed groundbreaking legislation that stated animal manure is not hazardous waste under state law. The legislation was passed in reaction to the Attorney General's 2005 lawsuit, this lawsuit, against the 14 poultry companies who have poultry growers in the Illinois River Watershed.
20. I have heard from members who are angry, frustrated, disappointed, and frightened because of the Attorney General's lawsuit against the poultry companies. They are saddened at his lack of support for production agriculture. Our members recognize the far-reaching implications if poultry litter were to be considered hazardous waste under federal law. It would be the beginning of the end of the livestock industry in the United States.

Dated this 15th day of February, 2008.

Marla R. Peek
Marla R. Peek

Subscribed and sworn to before me this 15 day of February, 2008.

Deborah Crane
Notary Public

My Commission Expires:

10-16-09

[SEAL]

